

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Part 2 of the Commission's	)	
Rules to Allocate Spectrum Below 3 GHz for	)	ET Docket No. 00-258
Mobile and Fixed Services to Support the	)	
Introduction of New Advanced Wireless	)	
Services, including Third Generation Wireless	)	
Systems	)	
	)	
Petition for Rulemaking of the Cellular	)	
Telecommunications Industry Association	)	
Concerning Implementation of WRC-2000:	)	RM-9920
Review of Spectrum and Regulatory	)	
Requirements for IMT-2000	)	
	)	
Amendment of the U.S. Table of Frequency	)	
Allocations to Designate the 2500-2520/2670-	)	RM-9911
2690 MHz Frequency Bands for the Mobile-	)	
Satellite Service	)	

**To: The Commission**

**INITIAL COMMENTS OF BLOOSTON LAW FIRM**

The Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast ("Blooston"), on behalf of various fixed microwave licensee clients and pursuant to Section 1.419 of the Commission's Rules, hereby submits its initial comments to the *Memorandum Opinion and Order and Further Notice of Proposed Rule Making* ("FNPRM") in the above-captioned proceeding, regarding the reallocation of certain spectrum in the 1910-1930 MHz, 1990-2025 MHz, 2150-2160 MHz, 2165-2200 MHz, and 2390-2400 MHz bands for new advanced wireless services.<sup>1</sup> In brief, Blooston

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<sup>1</sup> The original deadline for comments in this proceeding was set at 28 days after Federal Register publication. *FNPRM* at 1. Because Federal Register publication of the *FNPRM* came on September 21, 2001, the initial comment deadline was Friday, October 19<sup>th</sup>. However, the Commission has announced that due to recently-announced changes in filing procedures, the revised due date for paper and electronic filings due at the Commission on October 18 and October 19, 2001 has been extended to Monday, October 22, 2001. See *Public Notice* DA 01-2451 (dated October 18, 2001).

believes that the Commission should clarify that its rules will permit self-relocating microwave incumbents with operations in the 2165-2200 MHz band paired with spectrum in the 2115-2150 MHz band to collect reimbursement from emerging technology licensees (in this case, MSS and 3G licensees) in accordance with the cost-sharing plan and procedures for self-relocation adopted in WT Docket No. 95-157. This will promote the rapid and orderly transition of fixed microwave operations to new frequencies or new media. It will add certainty to the relocation process for incumbents while providing them with the flexibility to choose among an ever-changing variety of relocation options. Moreover, it would eliminate transaction costs in the relocation process and thereby significantly reduce the overall cost of relocating incumbent microwave licensees paid by MSS and other emerging technology licensees. Blooston believes that self-relocating incumbents should be eligible for reimbursement of per-link costs of up to \$250,000 with up to an additional \$150,000 if a new or modified tower is required. In addition, self-relocating microwave incumbents should have the option of receiving cost-sharing reimbursement credit of \$100,000 per link if they choose to relinquish their operations, to pursue leased facilities or alternative solutions for which the costs may not be readily definable. These and other suggestions are discussed more fully below.

## **I. Introduction and Statement of Interest**

Blooston represents dozens of fixed service (“FS”) microwave licensees with operations in the 2165-2200 MHz and 2115-2150 MHz bands (the “2.1 GHz Band”). These licensees have a substantial interest in the outcome of this proceeding because their FS operations in the 2 GHz Band are likely to be displaced by the final allocation established by the Commission. Moreover, a modification of the Commission’s Rules

governing advanced wireless systems (commonly referred to as International Mobile Telecommunications-2000 (IMT-2000) or 3G) could impact on the ability of these licensees to obtain reimbursement for costs associated with the self-relocation of its FS microwave operations. Accordingly, these initial comments will be limited to the issue of reimbursement for self-relocation by incumbent FS microwave licensees.

**II. The Commission Should Clarify That Incumbent FS Licensees Operating in the 2.1 GHz Band Will Receive Reimbursement for Costs Associated With Self-Relocation of their Licensed Facilities**

In order to expedite the spectrum clearing process for MSS licensees (or other Emerging Technology licensees with operations in the 2.1 GHz Band), and to provide incumbent FS microwave licensees with a measure of certainty and control over what could be a long and complicated relocation process, the FCC should clarify that the self-relocation procedures adopted in WT Docket No. 95-157 (the “Cost Sharing Docket”) will be available to FS incumbents. In particular, FS incumbents that self-relocate their operations should be able to register relocation costs of up to \$250,000 per link, with an additional \$150,000 if a new or modified tower is required, and to receive reimbursement of non-depreciated costs from MSS licensees and/or other new market entrants for costs incurred by incumbents who self-relocate their facilities any time after the effective date of the rules adopted in the instant proceeding.

By clarifying that self-relocating FS microwave incumbents can participate on an equal basis with emerging technology licensee-relocators in the cost-sharing process, and by encouraging incumbents to begin the self-relocation process as soon as possible, the Commission will clear the 2.1 GHz Band more quickly and thereby promote the rapid deployment of 3G and other emerging technology services. Such a result is consistent

with the public interest as well as policy goals set forth in Section 309(j) of the Communications Act of 1934, as amended (the “Act”). This is especially true where self-relocation makes spectrum available for the provision of advanced telecommunications services to rural areas, where many of the Blooston Firm’s clients operate 2.1 GHz microwave facilities.

### **III. FS Microwave Incumbents Should Be Allowed to Seek Reimbursement for Relocation to Leased Facilities or Alternative Media**

In addition, the policies and rules for the relocation of FS microwave incumbents that are modified and/or adopted in this proceeding should provide sufficient flexibility so that incumbents are not “penalized” if they determine that relocation to leased facilities or alternative media is the best solution for their communications needs. In this regard, the Commission’s rules should permit self-relocating FS microwave incumbents to register the costs of relocating their operations to leased facilities for the remainder of the period that their microwave license shares co-primary status with the emerging technology service. The Commission has previously determined that permitting self-relocating incumbents to submit relocation costs based on leased facilities is in the public interest.<sup>2</sup> These costs would not be difficult for the emerging technology licensee or a clearinghouse to verify. If either a microwave incumbent or an emerging technology relocater submits relocation costs based on leased facilities, the clearinghouse can determine whether the leased facilities represent comparable facilities and can calculate the present value of the lease payments. Moreover, as with the relocation of microwave incumbents in the bands allocated to broadband PCS, these costs can be made subject to independent verification by a third-party appraisers and subject to reasonable monetary

caps established by the Commission. The Commission should also adopt an option whereby FS microwave incumbents can receive an automatic reimbursement credit of \$100,000 per link if they relinquish their 2.1 GHz operations to pursue leased facilities or alternative solutions. In essence, it would allow FS licensees that have not yet decided on a permanent solution for their microwave relocation to clear the emerging technologies band, to make interim arrangements as necessary, and to maintain the flexibility to move to a permanent solution in the future for which they may not be able to calculate adequately their final relocation costs. In exchange for this flexibility, the FS licensee would accept a significantly reduced portion (40%) of the standard relocation reimbursement. This automatic reimbursement credit could be reduced each year by a reasonable percentage (*e.g.* 10%) as a way to provide market-based incentives for the rapid clearing of the 2.1 GHz band. To receive such a reimbursement credit, the FS licensee should be required to provide the Commission with evidence that they have surrendered their license authorization to the Commission.

Blooston submits that this automatic reimbursement credit would ultimately save significant transaction costs for emerging technology and 3G licensees operating in the 2.1 GHz Band. Moreover, because it is not clear whether an incumbent's costs for an independent third-party appraisal can be recovered as part of the cost-sharing process, it would allow small business FS microwave incumbents to save thousands of dollars on appraisal costs and to put these funds to productive use in the relocation process.

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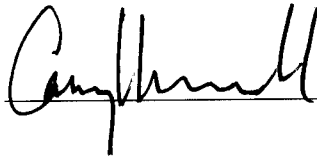
<sup>2</sup> Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 95-157, FCC 00-123, 21 CR 655, 15 FCC Rcd 13999 (2000) ("*Cost-Sharing MO&O*") at ¶ 18.

#### **IV. Conclusion**

The Blooston Law Firm urges the Commission to clarify that its existing cost-sharing policies and rules, which allow microwave incumbents to receive cost-sharing reimbursement credit for self-relocating their operations, shall apply to 2.1 GHz FS microwave incumbents that choose to self-relocate their facilities. Moreover, the Commission should allow FS incumbents to receive reimbursement credit for the present value of lease payments for comparable facilities. The value of such a reimbursement credit should be equal to the cost of leasing comparable facilities for the remainder of the period that the incumbent licensee has co-primary status with the emerging technology service, and should provide for a minimum credit of \$100,000 per link to provide a market-based incentive for rapid clearing of the 2.1 GHz band.

Respectfully submitted,

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